

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

BEDROCK GRAVEL, INC.;
Buena Vista County, Iowa.

**ADMINISTRATIVE
CONSENT ORDER**

NO. 2009-SW- 65

**TO: Joseph Heidenreich
Dresselhuis and Heidenreich
100 Main St.
Odebolt IA 52458**

I. SUMMARY

This Administrative Consent Order (Consent Order) constitutes an agreement between Bedrock Gravel, Inc. (Bedrock Gravel) and the Iowa Department of Natural Resources (Department) to amend the compliance schedule contained in Amended and Substituted Administrative Order Nos. 2007-SW-02-A1 & 2007-AQ-08-A1.

II. JURISDICTION

This Consent Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess penalties.

III. STATEMENT OF FACTS

1. On November 6, 2008, the Department finalized Amended and Substituted Administrative Order Nos. 2007-SW-02-A1 & 2007-AQ-08-A1 which directed the named parties to comply with the following provisions:

Pursuant to this Order:

1. Bedrock Gravel shall remove all waste tires from the property located at 6458 Hwy 71, Storm Lake, 50588 and properly dispose of the waste tires by February 1, 2009. Bedrock Gravel shall also pay an administrative penalty in the amount of \$2,500.

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2. Blake Wirtjers, Buster Wirtjers and James Wirtjers shall jointly pay a single administrative penalty in the amount of \$2,500 at the time of execution of this Order.
2. All fines assessed pursuant to Amended and Substituted Administrative Order Nos. 2007-SW-02-A1 & 2007-AQ-08-A1 have been paid in full.
3. On or about January 13, 2009, Bedrock Gravel notified the Department, through counsel, that heavy snow at the subject property would prevent compliance with the deadlines set forth in the prior order.
4. The Department asserts that adequate time was available between November 6, 2008 and the onset of heavy snowfalls in Northwest Iowa to allow for the removal of all waste tires but acknowledges that current conditions inhibit the completion of such removal.
5. At this time the parties believe the establishment of a new deadline for removal of the waste tires is appropriate. Bedrock Gravel has proposed a deadline of April 1, 2009.

IV. CONCLUSIONS OF LAW

1. Pursuant to section 455B.307(2) the Director may issue any order necessary to secure compliance with or prevent a violation of the provisions of part 1, Division IV of Chapter 455B.
2. Pursuant to section 455B.307(3) any person who violates the provisions of an order is subject to a civil penalty not to exceed five thousand dollars for each day of such violation.

V. ORDER

Pursuant to this Consent Order:

1. Bedrock Gravel shall remove all waste tires from the property located at 6458 Hwy 71, Storm Lake, 50588 and properly dispose of the waste tires by April 1, 2009.
2. If Bedrock Gravel fails to remove all waste tires from the subject property by April 1, 2009, then Bedrock Gravel shall pay a stipulated penalty in the amount of \$10,000 due and payable immediately upon the expiration of said deadline without the necessity of further action or notice by the Department.

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VI. PENALTY

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations.
2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The administrative penalty assessed by this Consent Order is determined as follows:
 - a. Economic Benefit. An economic benefit has been achieved through the noncompliance with Amended and Substituted Administrative Order Nos. 2007-SW-02-A1 & 2007-AQ-08-A1. Costs avoided include disposal fees, labor, and hauling costs. These costs will be incurred through compliance. The stipulated penalty contained within this Consent Order is based upon an assessment of \$5,000 for this factor. The actual economic benefit is greater than this sum, however the Department believes that the assessment of penalties for the gravity and culpability considerations will be appropriate and therefore has limited the economic benefit assessment to \$5,000.
 - b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. The failure to comply with a consent administrative order undermines the regulatory program. Based upon this consideration \$2,000 of the stipulated penalty is assessed for this factor.
 - c. Culpability. Bedrock Gravel knowingly and willingly agreed upon a compliance date of February 1, 2009 for the removal of all waste tires. This date was established with full knowledge of normal winter conditions in Iowa. Bedrock Gravel has now proposed a revised date of April 1, 2009. The Department has accepted the date set by Bedrock Gravel. The failure to comply with the former and revised dates should be considered willful noncompliance. Therefore, \$3,000 of the stipulated penalty is assessed based upon this factor.

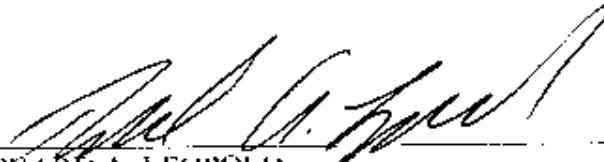
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.308 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Consent Order is entered into knowingly by and with the consent of Bedrock Gravel. By signature to this Consent Order, all rights to appeal this Consent Order are waived.

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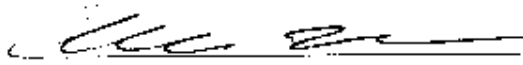
VIII. NONCOMPLIANCE

Compliance with paragraph 1 of provision "V. Order" of this Consent Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Consent Order. The Department reserves the right to issue a new administrative order with an administrative penalty or to seek referral to the Attorney General in lieu of collecting the agreed upon stipulated penalties established by this Consent Order.



RICHARD A. LEOPOLD
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 4 day of
March, 2009



CHAD MOHR
BEDROCK GRAVEL, INC.

Dated this 6 day of
Feb, 2009

Field Office #3; Jon Tack; V.L.C